

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

FEB 28 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

LESLIE ZANE POST,

Appellant.

)  
)  
) 2 CA-CR 2006-0018  
) DEPARTMENT A  
)

MEMORANDUM DECISION

)  
) Not for Publication  
) Rule 111, Rules of  
) the Supreme Court  
)  
)

APPEAL FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. CR2005-079

Honorable R. Douglas Holt, Judge

AFFIRMED

Meredith Little

Tucson  
Attorney for Appellant

V Á S Q U E Z, Judge.

¶1 Leslie Post appeals from the trial court's rulings finding he had violated the conditions of his probation and extending his probation term with an additional sixty-day term in jail. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), avowing she has diligently searched the record but has found

no meritorious issues to raise on appeal. Post has not filed a supplemental brief. We have reviewed the entire record for fundamental error pursuant to our obligation under *Anders* and have found none.

¶2 Post was placed on a two-year term of supervised probation in May 2005 after being convicted of possession of drug paraphernalia, a class six felony. At sentencing, the trial court refrained from designating the offense a felony or misdemeanor in accordance with A.R.S. § 13-702(G), which permits a court to postpone the designation until after termination of probation.

¶3 In September 2005, the state petitioned the court to revoke Post's probation on the grounds he had used methamphetamine in June and August 2005, which he had admitted in signed confessions; had tested positive for methamphetamine in July and September 2005; had possessed a firearm; and had failed to report to the probation department on a weekly basis or to obtain substance abuse treatment as directed. After an evidentiary hearing, the court found Post had violated the conditions of his probation, reinstated him on probation with additional conditions, and designated the offense a class six felony.

¶4 A violation of probation must be established by a preponderance of the evidence. Ariz. R. Crim. P. 27.7(b)(3), 17 A.R.S.<sup>1</sup> We will uphold a trial court's conclusion

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<sup>1</sup>Rule 27.7 was amended and renumbered as Rule 27.8, effective December 1, 2005. 210 Ariz. LXI (2005). In this decision, all citations to Rule 27.7 refer to the previous version of the rule.

that a violation has been proved “unless it is arbitrary or unsupported by any theory of evidence.” *State v. Moore*, 125 Ariz. 305, 306, 609 P.2d 575, 576 (1980).

¶5 The court’s ruling that Post had violated his probation conditions is well supported by the evidence. We note that his violation of the probation officer’s oral direction to report to the probation department weekly could not be a ground for revocation because the direction was not written. *See* Ariz. R. Crim. P. 27.7(c)(2); *State v. Korzuch*, 186 Ariz. 190, 194, 920 P.2d 312, 316 (1996). However, considering the evidence of Post’s other infractions, including his admissions that he had used illegal drugs and testimony about a rifle found in his vehicle during a police search, the court did not err in finding Post had violated his probation conditions. Moreover, we conclude the trial court would have entered the same disposition order and would have reinstated Post on probation with additional conditions even in the absence of any finding that he had failed to report as directed. *Cf. State v. Ojeda*, 159 Ariz. 560, 561, 769 P.2d 1006, 1007 (1989) (“[I]f the judge relies on inappropriate factors and it is unclear whether the judge would have imposed the same sentence absent the inappropriate factors, the case must be remanded for resentencing.”).

¶6 The trial court’s continuing Post on probation and imposing additional conditions was well within its authority. *See* Ariz. R. Crim. P. 27.7(c)(2) (upon finding a violation, court “may revoke, modify or continue probation”). And we find no error in the court’s designation of Post’s conviction as a felony. In its discretion, the court could have

designated Post's offense a felony when it first placed him on probation. *See* § 13-702(G); *State v. McInelly*, 146 Ariz. 161, 164-65, 704 P.2d 291, 294-95 (App. 1985) (refraining from designating offense is discretionary under § 13-702). We thus see no reason the court could not designate the offense a felony after Post violated his conditions of probation.

¶7 Affirmed.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge